

In the Matter Of:

MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

19-cv-265-NSR

MARC H. FISHMAN

October 17, 2023



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No.: 19-cv-265-NSR

MARC H. FISHMAN,

Plaintiff,

-against-

CITY OF NEW ROCHELLE, POLICE
OFFICER LANE SCHLESINGER SHIELD
#1058, JOSEPH F. SCHALLER, ROBERT
GAZZOLA, IN HIS OFFICIAL CAPACITY
AS POLICE COMMISSIONER OF THE
CITY OF NEW ROCHELLE POLICE
DEPARTMENT, SERGEANT MYRON
JOSEPH SHIELD #18, & COUNTY OF
WESTCHESTER,

Defendants.

REMOTE DEPOSITION OF MARC H. FISHMAN

Tuesday, October 17, 2023

Reported by:

Amy A. Rivera, CSR, RPR, CLR

JOB NO. J10406555

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1:07 p.m.

REMOTE deposition of MARC H. FISHMAN,
held pursuant to Notice, before Amy A. Rivera,
Certified Shorthand Reporter, Registered
Professional Reporter, Certified LiveNote Reporter,
and a Notary Public.

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R E M O T E A P P E A R A N C E S :

LAW OFFICE OF CANER DEMIRAYAK, ESQ., P.C.

Attorney for Plaintiff

One Pierrepont Plaza

300 Cadman Plaza, 12th Floor

Brooklyn, NY 11201

BY: CANER DEMIRAYAK, ESQ.

THE QUINN LAW FIRM

Attorneys for Defendants

399 Knollwood Road, Suite 220

White Plains, NY 10603

BY: LALIT K. LOOMBA, ESQ.

ALSO PRESENT:

Heidi Sarsony, Legal Video Specialist

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2 before?

3 A. I've heard of the American
4 Disabilities Act, yes.

5 Q. And do you have an understanding of
6 the definition of a disabled person under that
7 statute?

8 A. Yes.

9 Q. Okay. And I'm not asking you for
10 legal advice or anything like that. I'm not
11 asking you to be an attorney, but just in terms of
12 your own personal understanding of that
13 definition, can you please provide that?

14 A. Sure. It is a disability covered
15 under the ADA and the amended ADA of 2008, 2009,
16 which is a major bodily impairment that affects a
17 major bodily function rendering the person
18 clinically disabled.

19 Q. Were you born with any disabilities
20 under the -- that qualify under the Americans With
21 Disabilities Act?

22 A. Not that I'm aware of.

23 Q. Do you trace or do you claim to be
24 your ADA disabilities to the car accidents that
25 you had in 2013?

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A. Yes

Q. And I understand that you claim there's more than one disability, but could you please list the disabilities that you claim that qualify under the ADA that were caused by that -- by those 2013 car accidents that you were involved in?

A. Yes. So I have ulnar, U-L-N-A-R, nerve entrapment on both elbows and arms that inhibit my ability to write, use my hand movement. My lower fingers are numb, a significant part of the day. I have tinnitus which is ringing in the left ear, which impacts my hearing as well as balance and vertigo.

I have vertigo daily, particularly when I move my head, get up in the morning or walk.

I have occipital, O-C-C-I-P-I-T-A-L, neuralgia, N-E-U-R-A-L-G-I-A, which is severed nerves in the rear of my head, neck on the left side behind the ear, near the ear.

I have burning eyes as a result of that, and daily headache pain which affects my nerve system pain management.

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I have post-concussion syndrome from a concussion sustained June 10, '13, in an accident where I was rear-ended and suffered whiplash by a van carrying six people. So I am in regular post-concussion therapy care.

I have peripheral neuropathy, which is permanent nerve injury from the car accident.

I have severe obstructive sleep apnea, which affects my ability to sleep.

I have temporal joint disorder or otherwise known as TMJ. I'm not going to try to spell temporal. We call it the acronym, TMJ, and basically TMJ prevents my ability to chew, speak, or more importantly to sleep, open my mouth at night, necessitating the Inspire implant, because the TMJ ball joints are damaged and arthritic and don't cause my mouth to open as someone as wide without that disability.

I have a mobility disability with my right foot from the hallux rigidis. I can't walk on my toe. It's very painful.

Q. That last one would have resulted from the 2021 car accident. Is that right?

A. Correct. But prior to that, I had

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what's called sesamoiditis, which is the sesamoid bones in the right foot getting damage from the 2013 accident. So I had a right foot injury previous to that.

And those are pretty much the major ones, you know, that affect, you know, movement, the post-concussion syndrome, traumatic brain injury affects registration, cognition, short-term memory, names, sequences. Occipital neuralgia, you know, also affects my ability to see outside without sunglasses. My eyes burn, so I wear sunglasses pretty much all the time outside.

Q. Okay. Other than the ones you listed, are there any others?

A. I think those are the main ones. There might be one or two others, but without reading the doctors' report, those are the major ones that I live with day-to-day. Obviously, the hernia, half of my groin is numb from the meshes, so I have numbness and nerve pain throughout my body.

Q. Sure.

And the hernia surgery was as a result of the 2013 car accident?

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Q. How long have you been treating with Dr. Michelle Maidenberg?

A. I've been treating with Dr. Maidenberg since -- since the accident, 2013.

Q. Continuously since 2013?

A. Regularly, weekly, most weeks, yes.

Q. And what does the treatment consist of?

A. I don't understand the question.

Q. Well, when you treat with Dr. Maidenberg, is it -- is that a talk therapy situation or is she having you do exercises or is it something else? Just describe it for me?

A. All three. We do cognitive breathing exercises. We do executive function testing. We do memory recall. We do some speech, traumatic brain injury therapy. We do some role playing with decision-making, post-concussion treatments, various.

Q. When was the last time you had a session with Dr. Maidenberg?

A. Last Wednesday.

Q. When is your next one scheduled for?

A. Tomorrow.

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Premium Therapy, yes, Joan Ryan, therapist;
received cognitive therapy from the Center For
Cognition, Dr. Brown, in Manhattan.

Q. Any others?

A. No, there was some cognitive therapy
in the South Bronx. I forget the name where I
attended.

Q. By the way, when you see your therapy
with Dr. Maidenberg, is that a Zoom call where you
can both see and hear each other?

A. Sometimes.

Q. Do you sometimes do it over the
telephone?

A. Sometimes. Mostly face time, Zoom,
bad connection, telephone.

Q. Do you use realtime transcription when
you have your cognitive therapy with
Dr. Maidenberg?

A. Yes.

Q. At any time, have you had what's
referred to as a disability aide assigned to you?

A. Yes.

Q. And that's Ms. Bolivar, right?

A. Several aides assigned to me.

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you know, for the, you know, denied in person and virtual visits pending in the appellate courts New York.

Q. Okay. Understood. Thank you.

We were talking about your disability aides, Efrim Cohen, you mentioned Joyce Fishman. Were there any others?

A. Yes.

Q. Who?

A. I had Isabelle Bolivar Court-appointed as the American With Disabilities Act aide.

Q. Which Court appointed her?

A. Family Court Judge Michelle Schauer in Yonkers. She moved to Yonkers and took the case with me.

Q. Is that how you first met Ms. Bolivar?

A. No.

Q. When did you first meet her?

A. I met Ms. Bolivar in December 2015.

Q. When was she appointed by Judge Schauer?

A. I believe the appointment was in March of 2018 in Court order.

Q. Okay. Did you ever live with

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for the reporter?

A. Sure, 3200 Netherland,
N-E-T-H-E-R-LA-N-D, Avenue, apartment 1F, Bronx,
New York, 10463.

Q. Thank you.

And that's the Riverdale apartment
that we've been talking about, correct?

A. Yes.

Q. Okay. And you -- when you woke up
that morning, am I correct that you were under the
impression that you were going to have a
supervised visitation with your children?

A. I received a text message from Ann
Elliott confirming the visit.

Q. And that's one of the text messages
that you reviewed in preparation for your
deposition, correct?

A. Yes.

Q. And what did the text message say?

A. In response to my --

Q. In sum or substance, you don't have
to --

A. To summarize, in response to my text
to her at 5:08 p.m. on December 14th asking her to

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confirm the visit that it was Hanukkah, and I

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celebrate Hanukkah, I'd like to see my kids, and

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is my visit on for the, you know, two-week cycle,

5

which was tomorrow, the 15th.

6

She wrote: Pick me up at 9 a.m. and,

7

you know, I'll be outside for you to come get me

8

for the visit.

9

Q. Okay. And so, am I correct that then

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you and -- Ms. Bolivar was living at your

11

apartment in the Riverdale at the time?

12

A. Yes.

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Q. And so the two of you woke up, got

14

started, and drove into -- drove to pick up

15

Ms. Elliott, the supervisor, correct?

16

A. Right. Ms. Bolivar drove. I was the

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passenger, yes, to pick up Ms. Elliott in Harlem,

18

yes.

19

Q. Okay. And you picked her up at her

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house?

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A. At her apartment building.

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Q. Her apartment building, thank you.

23

And had you done that before?

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A. Yes.

25

Q. When you -- what time did you and

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Q. By the way, did Jonah -- as Ann Elliott was walking back towards the car, was he still just playing in the driveway?

A. Yes, he had a -- there was another male there who was older and taller, who he was playing with, and there was a net, and there was hockey equipment, and they were -- they were shooting a hockey stick and playing in the driveway.

Q. Did you ever see him run back to his house?

A. No, not while I was there. He didn't run back. He was playing with his friend the entire time we were there.

Q. So Ann comes back and says: The visit's been canceled, and tell me what happens after that?

A. I told Ann I wanted to go make a full report at the police station of a visitation violation and asked the cops if they could enforce my visitation order.

And Ms. Bolivar drove to the police station, I believe -- I think it's on Main Street or North Avenue. It's the building next to the

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school administration for New Rochelle.

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Q. What did Ann Elliott say, if anything,
after you said you wanted to go to the police
station?

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A. I don't understand the question.

7

Q. Sure.

8

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You said that you wanted to go to the
police station to make a report, correct?

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A. Yes.

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Q. And did Ann Elliott hear you say that
that's what you wanted to do?

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A. Yes.

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Q. And did she react in any way upon
learning that that was your intention?

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A. Yes, she was upset the visit was
canceled. I prepaid her \$500 for a visit, so the
money is not refundable, you know, and she saw I
was -- I was upset, you know, two Saturdays a
month with the kids and my confirmed visit earlier
was -- was canceled, according to Ann Elliott,
after she spoke with Jennifer.

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So, you know, I was frustrated and
upset. I wouldn't get to see my kids, who I love
very much.

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Q. Sure, I understand. I was more interested if Ann Elliott said anything that you recall?

A. I think she was going to tell the cops that --

Q. No. Mr. Fishman, sorry to cut you off. I don't think you understand my question.

A. Okay, I'm sorry.

Q. You're in the car, and the car is parked four houses, 200 feet away, let's say, from the Halcyon Terrace --

A. Yes.

Q. Ann comes back and announces that the visit is going to be canceled. You announce that you're going to go to the police station?

A. Yes.

Q. She hears that, does she say anything in response to you announcing that you were going to go to the police station?

A. I don't know. I don't recall exactly what she said.

Q. Okay. That's fine. So, in fact, you drove to the police headquarters, right?

A. Ms. Bolivar did, yes. I was the

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exchanged notes with me.

Q. When you say, she exchanged notes,
what do you mean?

A. I wrote that I wanted to make a police
report of a Court-ordered visit violation and
she -- I couldn't hear her, so she wrote on the
piece of paper back that she was getting an
officer to take my report.

Q. Okay. So you're saying you actually
literally took a piece of paper and wrote
something out and handed it to her?

A. There was like -- I wouldn't call it
like a bank teller window, but I would call it
some sort of receptacle to exchange, I would call
it papers or I.D. underneath this bulletproof
glass that had I think had some drilled window
holes -- drilled holes through it, it was very
dark and, yes, I told her I couldn't hear her, and
that I was disabled. I kept on putting my ear to
the glass, and then eventually put a note
underneath, and she put the note back to me.

Q. What did it say, if you remember?

A. Hold on. I think, it said, "hold on,"
awaiting an officer; meet you outside.

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Q. Did you have any verbal exchange with her in front of the window?

A. I was trying to. I was definitely making statements about violating my visitation order. I had a very difficult time trying to comprehend her words.

Q. Did you say that to her out loud?

A. I believe I kept on saying, I'm disabled, and I can't hear you. Can you speak louder?

Q. Was Ms. Elliott standing next to you when you were up at the window communicating with the -- and I'm just going to make a representation that that person is called a civilian service officer, CSO for short.

So when you were speaking with the CSO, was Ms. Elliott there?

A. Ms. Elliott and Ms. Bolivar were -- were near me, yes.

Q. Did you -- did you hear Ms. Elliott say, while you were there that on the last visit, meaning December 1st of 2018 that the children had become upset and wanted to end the visit with you?

A. I don't recall her saying that, no.

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could see the question-and-answer room in front of me, directly in front of me, the door to a room that had white walls.

Q. So the officers spoke with Ms. Elliott first, and when that happened, you were sitting in a chair, and you could see the door to the room where the officers and Ms. Elliott were speaking. Is that accurate?

A. No. So what's accurate is that Ms. Elliott went into the room first. She motioned for all of us to go into the room and held open the door, allowed Ms. Elliott. He denied Ms. Bolivar. At which time, Ms. Bolivar identified herself as my aide for communication, Court-appointed, and that she had the papers with her for the orders, and I needed her help, and she needed to assist me with communication and interpret and show all the orders to Officer Schlesinger. That's what we requested when we were at the window.

Q. So when you said that the officers interviewed Ms. Elliott first. Is that correct?

A. No, no. They didn't enter the room with Ms. Elliott until they let me in the room and

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MR. LOOMBA: Okay, all right. That's going to take too much time, and I don't want to waste your time; I'm sorry.

Q. So let me ask you this: Is it correct that the police spoke with Ms. Elliott first?

A. No, in the question-and-answer room, I think they only spoke to Ms. Elliott and I together.

Q. Oh, okay. So you were in the room together with Ms. Elliott?

A. Yes, I walked into the room after Officer Schlesinger denied Ms. Bolivar as my aide access to the room to assist me with full and effective communication, I went into the room afterwards.

Q. You went into the room with Ms. Elliott, and who else was in the room?

A. Officer Schlesinger and Myron Joseph, at different times and sometimes together.

Q. And how long were -- by the way, why don't you describe first what happened inside that room, like who spoke, who was asking the questions? And just give me a picture of what happened?

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A. Right. I went to my medical bag and showed Officer Schlesinger my traumatic brain injury card, and asked for my aide to be brought in with me, and showed the card to him, and he said he wasn't interested.

Then I showed him my Inspire implant card, and started describing my symptoms, you know, this is a visitation order. It's over 20 pages. It's very tiny print, and I can't, you know, read that without assistance. I would need an aide or a note taker or some sort of, you know, transcription service.

At which time, you know, he walked back with Mr. -- what's his name -- Officer Joseph back out of the room, left me with Ann, and returned with a copy of this, you know, visitation order from 2018 and a copy of the order of protection with carve-out for supervised visits and asked me to authenticate it and asked Ann Elliott to authenticate it, if this was the document for visits. That was the governing document.

Q. And that's the 27-page order?

A. It's 20-some-odd pages. I don't

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Ms. Elliott was there as well, did you tell
Officer Schlesinger that you suffered from a
disability?

A. Yes, and I showed him my two
disability cards.

Q. Okay. And when you said you suffered
from a disability, which specific disability did
you mention?

A. I said, I suffer from a traumatic
brain injury and encephaloneuralgia and have a
difficulty with my burning eyes reading very small
print, and that the print on the order he showed
me was very, very tiny.

So I started reading it, I get a
headache, at which time, I started getting redder
and redder, and got a headache, and had an
encephaloneuralgia attack while sitting at the
table.

Q. And did you ask Officer Schlesinger
for a specific accommodation?

A. Multiple ones, yes.

Q. Which specific accommodations did you
request?

A. I asked for my aide to come in to

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2 neurosurgeon, on the implant card, the second
3 implant card was the Inspire with Dr. Boris
4 Chernobilsky's number on it, and then the other
5 one, my father.

6 And then I reiterated, I need
7 Ms. Bolivar here to assist me with communication
8 in her Court-appointed role as the visitation and
9 Americans With Disabilities advocate and allow her
10 to come in.

11 Q. Other than what you've listed, did you
12 ask for any other accommodations?

13 A. I don't recall.

14 Q. If Ms. Bolivar had been in the room
15 with you, how would she have -- how do you think
16 she would have helped you?

17 A. Well, Ms. Bolivar would have brought
18 the order, and she's appointed from March of 2018,
19 and Ms. Bolivar would have been able to give a
20 third perspective on what happened that day as the
21 Court-appointed aide so that the officer didn't
22 just have what he claimed was Jennifer's version,
23 Ann Elliott's version, and my version.

24 She would also have been able to
25 isolate the portions of the order of protection

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would -- if you had had access to them, that would have also helped you explain to Officer Schlesinger that, in fact, you had not violated any laws, correct?

A. Well, it wasn't my car, Isabelle Bolivar's car. But, yes, the documents she had in her purse and in her smart phone, and the paper documents would have shown that between 10 and 5, the 1st and 15th of every month, we have supervised visits. There's no violation, as long as Ann Elliott is around and the visit wasn't canceled in writing beforehand.

And that we didn't go on any property, and Ms. Bolivar could emphasize that. We didn't go on any property, and I hadn't communicated to Ms. Solomon, I haven't communicated with her directly since 2015.

Q. And I guess what I want to make sure I understand properly is that your position is if you had had access to your documents in the trunk, and if Ms. Bolivar had been there and was able to assist you in reading the orders, all of that could have helped you explain to Officer Schlesinger that you, in fact, had not violated

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between 2019 and 2020 that you used Ms. Elizabeth

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Bussian as the visitation supervisor?

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A. Yes.

5

Q. And she charged you a total of \$1,500

6

for that?

7

A. No, I was charged over \$15,000 for it.

8

Q. I'm sorry. I did -- thank you.

9

You're absolutely correct; \$15,000.

10

And why did she stop in 2020? Was

11

that because of Covid, I think you explained

12

before?

13

A. She stopped in-person because of

14

Covid, even though the visits were supposed to be

15

in my home because of my disability, you know, and

16

she had interpreted the order appointing her as a

17

visitation voluntary for the kids. And so missed

18

several visits until judge Capeci clarified after

19

I filed papers that the visit were mandatory and

20

my ex was subject to a contempt order, at which

21

time, my ex filed with the kids to terminate

22

visits, once she was put under threat of contempt,

23

since the kids didn't show up again for virtual or

24

in-person visits.

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Q. So Ms. Bussian stopped because all

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A. All the transcript costs for county court, all the transcript costs for IDV court or Independent Domestic Violence court, all the transcript costs for these cases.

Q. \$50,000 for criminal defense legal fees, can you just identify the lawyers that have defended you in the criminal case?

A. I believe my lawyer is Caner Demirayak, who's on this call with us.

Q. Is that \$50,000 consist of Mr. Demirayak's fees alone or is there another lawyer that contributes to that number?

A. I believe Donna Drum was my ADA advocate. There was some legal fees for her. I believe there were legal fees to Caner.

Q. Have you actually paid \$50,000 to Mr. Demirayak or is that an amount that you owe him?

A. I'm not sure exactly what was paid. I have to check the paid checks and, you know, ACHs to see what I paid him and what I owe him.

Q. What about for Donna Drum, how much do you owe her?

A. I paid her thousands of dollars.

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Q. As you're sitting here with me
answering my questions, do you know how much?

A. I don't know the exact amount, either
one, I know both is thousands dollars.

Q. When you paid Donna Drum, was that out
of a checking account?

A. I think we paid Donna Drum via credit
card.

Q. And what about Mr. Demirayak?

A. I think Mr. Demiraya was paid via
check, via -- I think Zelle, and possibly some
other ACH method.

Q. Now, in L, paragraph L, it says that
you lost your real estate broker's license, but
before you said -- I got the impression that you
had not lost it. So could you please explain?

A. Yeah. As a result of this case, and
the misrepresentations made regarding the visit
and the order of protection as the Department of
State suspended my license and failed to renew it
from around, I believe, the fall of 2021 or the
fall of '20 I have to check, until August the
following year.

So I didn't have my license for 10

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months, until they saw that, you know, the 330s and the representations that I wasn't served with the order of protection, I was convicted of violating, I was actually in jail at the time when everything was typed up, but I hadn't gone on my ex-wife's property and hadn't communicated with her, and I believe they saw some of the federal papers and decided to reinstate

Q. So what's your best estimate as to when your license was suspended?

A. I'm not good with dates, sir, but I know it was October to August. It was not '22, '23. Was it '20 or '21? I think it's either '19 to '20 or '20 to '21. I have to check. I'm really not good with numbers. It was a 10-month period in the middle there.

Q. And did that -- did the suspension of your broker's license impact your income in any way?

A. Yeah. I didn't have any income, couldn't have rental commissions or brokerage or sales or store or building sales, couldn't -- couldn't -- couldn't earn with the violation of their licensure.

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Q. And it says -- excuse me. It says:
valuation to be supplied under separate cover, do
you -- I have not received anything. Do you have
an estimate here as to what the monetary impact of
that 10-month suspension is?

A. I would say over \$150,000.

Q. And how did you calculate that?

A. Well, because I work on, you know,
five to six deals a month, and during that period
of time, I couldn't work on any, or actually any I
worked on, I wasn't able to be compensated for.
So services were rendered free.

So your average rental deal is
probably a 3 to \$4,000 commission, you know, sales
of buildings, one building is between 100 and 200
a year, you know, and then brokerage for stores,
commercial spaces, I usually make \$150,000 gross.
It varies if I co-broked it, and if my co-broker
got a portion of that or not.

Q. And who's your co-broker?

A. I have my broker's license, if I
co-broke with someone else. I wasn't able to do
brokerage work for that 10-month period of time.
That's what the lawsuit states.

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2 say something to you that you felt was
3 disrespecting you because of your claimed
4 disabilities?

5 A. Yes.

6 Q. And do you know which officer said
7 that?

8 A. Officer Schlesinger.

9 Q. And what did he say?

10 A. Officer Schlesinger said in front of
11 me to Isabelle Bolivar: Shame on you as a federal
12 officer, you should know better than to transport
13 someone to attempt to commit a crime.

14 Q. And did Officer Schlesinger say
15 anything else that you viewed as disrespectful of
16 your disabilities?

17 A. Yes.

18 Q. What did he say?

19 A. When I showed him my traumatic brain
20 injury card, he said: I don't care. Put it away.

21 I said: No. I want you to read the
22 conditions and symptoms on the back and the
23 accommodation I need.

24 I don't need to see it. My boss says
25 I don't need to see it.